

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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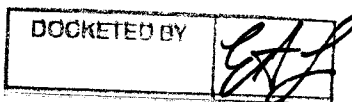
SUSAN BITTER SMITH

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ARIZ CORP COMMISSION  
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IN THE MATTER OF THE APPLICATION OF )  
TUCSON ELECTRIC POWER COMPANY FOR )  
APPROVAL OF ITS 2015 RENEWABLE )  
ENERGY STANDARD IMPLEMENTATION )  
PLAN. )

DOCKET NO. E-01933A-14-0248

**SUPPLEMENT TO TUCSON  
ELECTRIC POWER COMPANY'S  
RESPONSE TO TASC  
AND  
PROPOSED AMENDMENTS**

**ORIGINAL**

Tucson Electric Power Company ("TEP" or the "Company") further responds to The Alliance for Solar Choice's ("TASC") legal concerns with Staff's Proposed Order. TASC continues to attack TEP's utility-owned rooftop solar program, a small pilot program that is part of TEP's 2015 Renewable Energy plan ("Program"). Under TEP's Program, a customer would voluntarily participate and allow TEP to place appropriately-sized solar photovoltaic systems on the customers' rooftop. In return for allowing TEP to install solar facilities on its home, the typical residential customer would receive a 25 year fixed rate that approximates the monthly electric bill that they are currently paying.

TEP would like to further address two of TASC's legal arguments, as well as provide related amendment language to the Proposed Order:

1. The Commission's broad authority to set just and reasonable rates provides ample support for the Commission to set a fixed rate for a long period of time. Indeed, the Commission has done so in many similar contexts, such as special contracts and other REST tariffs and programs. However, as discussed below, the Commission's authorization of a 25 year fixed rate would not limit the Commission's ability to either discontinue the Program or change the rate for new and/or existing customers. It is important to note that TEP will be expressly providing in the customer contract, a "regulatory out" for Program participants in the event that a future Commission decides to change the fixed rate and declines to grandfather in those customers. Should this occur, a Program participant

1 would be able to withdraw from the Program, incur no additional cost or penalty, and TEP would  
2 remove its solar equipment from the customer's roof and return the customer to the appropriate  
3 residential rate.

4 2. The small scale of this pilot program results in a *de minimus* impact on TEP's fair value rate  
5 base and rate of return. Indeed, TEP's rate of return may slightly decline. And it is not uncommon to  
6 approve *de minimus* tariffs outside of a rate case. Moreover, the Program is intended to be revenue  
7 neutral. As a result, the Program does not implicate the Arizona Constitution or *Scates*.

8 TEP suggests that the Commission adopt two amendments to make clear that the Commission  
9 has authority to modify the rate in the future, and to specify the legal authority for adopting the tariff.  
10 Proposed amendment language is attached as Exhibits A and B. TEP urges the Commission to give its  
11 customers the choice of participating in this new program.

12 **I. The 25 year Contract Term is Reasonable.**

13 Under TEP's proposed tariff, a customer that participates in the Program will have a fixed rate  
14 for the 25 year term of the contract. The 25-year rate is tied to the anticipated life of the rooftop system  
15 (and the warranty offered by the manufacturer of the panels). Once the system is installed, it should  
16 remain on the roof and operating for 25 years. This period also is similar to the term of the solar leases  
17 offered by third party solar providers.

18 As noted by Staff, the Program assists TEP in meeting its REST obligations. However, the  
19 Program is entirely voluntary for TEP customers. In order to attract participation in the Program, the  
20 customer must receive some benefit for allowing TEP to place a rooftop solar system on the customer's  
21 house. Therefore a fixed rate for an extended period of time is necessary to attract customers to the  
22 Program. A customer can determine whether, given its particular circumstances, the Program rate  
23 makes sense for the customer.

24 The 25-year arrangement also benefits the Company and its other customers through long-term  
25 operational certainty and stability on the grid.

26 The Commission has broad constitutional authority to set just and reasonable rates. It has used  
27 that authority to set long-term fixed rates in several contexts. For example, fixed rates are common in

1 special contracts approved by the Commission. Further, TEP's Bright Tucson Community Solar  
2 Program, as approved by the Commission, contains a fixed rate.<sup>1</sup> The special solar contracts with Pima  
3 County and the City of Tucson also contain fixed rates. And APS's Flagstaff Pilot Program includes a  
4 20 year fixed rate. In short, longer-term fixed rates are reasonable and common for solar facilities.

5 Importantly, even though the Commission has the authority to establish a rate for 25 years,  
6 should a future Commission decide to terminate the Program and not grandfather existing Program  
7 participants, such participants will have the ability to terminate their participation at no cost. TEP will  
8 be providing a "regulatory out" to participants. Should the rate be changed without grandfathering, a  
9 customer will be able to assess whether it wants to continue in the Program at the new rate or return to  
10 another tariff. If the customer opts out of the Program, TEP will remove the solar facilities from the  
11 customer's premises and move the customer onto an appropriate tariff – all at no cost to the customer.

12 To put any concerns to rest, TEP proposes that language be added to the order to clarify that a  
13 future Commission may modify the rate if it finds it just and reasonable to do so and that Program  
14 participants may opt out of the Program if the rate is modified. Proposed language for an amendment is  
15 included in Exhibit A.

## 16 **II. The Program Satisfies the Arizona Constitution and Scates.**

17 Staff's proposed order fully complies with the Arizona Constitution and *Scates*. *Scates* involved  
18 a major rate increase for an existing service. In contrast, TEP's utility-owned rooftop solar program is a  
19 new, voluntary service, and the tariff will have a minimal impact on TEP's revenue and no impact on  
20 rate base until the next rate case. The pilot program is revenue neutral and will not result in any increase  
21 in TEP's fair value rate of return.

22 First, the impact on revenues and rate base will be *de minimus*. The current fair value of the  
23 facilities is \$0, because the facilities haven't been built yet. Moreover, once they are built, they will cost  
24 approximately \$10 million (if this pilot Program is fully subscribed), in the context of a \$2.2 billion rate  
25

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26  
27 <sup>1</sup> Decision No. 71835 (August 10, 2010)(approving Staff's recommendation that the Solar  
Capacity Rate be fixed for 20 years to match the typical term of a PPA)(See Finding of Fact No. 20(C)).

1 base. This is a minor capital project for TEP, which is investing many millions each year in generation,  
2 transmission and distribution systems. Considering TEP's \$2.2 billion rate base approved in its last rate  
3 case<sup>2</sup>, \$10 million is approximately 0.45% of the rate base, less than ½ of one percent.

4 Second, TEP has approximately 414,000 customers. TEP estimates that about 500 to 600  
5 customers will be able to participate in this pilot program. These customers are currently paying the  
6 standard residential rate. The proposed tariff rate is comparable to the current standard residential rate.  
7 Thus, there is no "rate increase" as there was in *Scates*. This is a far cry from *Scates*.<sup>3</sup>

8 Finally, there is no guarantee that the \$10 million will be included in the Company's rate base.  
9 TEP's investment in these rooftop solar facilities—like all other TEP capital investments—will be  
10 reviewed for prudence in the next rate case. Only if the Commission finds the investment prudent will  
11 the facilities be included in rate base, and only then will the facilities have a (very small) impact on  
12 TEP's overall revenue requirement.

13 The Commission would not be breaking new ground in approving TEP's rooftop solar program  
14 and tariff. Indeed, the Commission has often relied on the *de minimus* impact on rates in approving  
15 special contract rates. For example, the Commission approved special contracts solar rates for the City  
16 of Tucson and Pima County, finding that those rates would have a *de minimus* impact on TEP's

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20 <sup>2</sup> See Decision No. 73912 (July 27, 2013) at page 70, Finding of Fact No. 35.

21 <sup>3</sup> *Scates* does not sweep as far as TASC contents. In *Scates*, the Commission gave the phone  
22 company a \$4.9 million rate increase (in 1970's dollars). "The Commission approved the increase  
23 without any examination of the costs of the utility apart from the affected services, without any  
24 determination of the utility's investment, and without any inquiry into the effect of this substantial  
25 increase upon Mountain States' rate of return on that investment." *Scates v. Arizona Corp. Comm'n*, 118  
26 Ariz. 531, 533, 578 P.2d 612, 614 (Ct. App. 1978). The Court was clear in what it was not deciding,  
27 "We do not decide in this case, for example, whether the Commission could have referred to previous  
submissions with some updating or whether it could have accepted **summary financial information**.  
We do hold that the Commission was without authority to increase the rate without **any consideration**  
of the **overall impact** of that rate increase upon the return of Mountain States, and without, as  
specifically required by our law, a determination of Mountain States' rate base." *Id.*, 118 Ariz. at 537,  
578 P.2d at 618 (emphasis added).

1 revenues.<sup>4</sup> Similarly, the Commission relied on the *de minimus* impact on rate base and earned rate of  
2 return in approving APS's Flagstaff Community solar program.<sup>5</sup>


3 Thus, there is no legal restriction on the Commission approving this program and giving  
4 customers another choice. However, TEP believes that it would be appropriate to include language in  
5 the Proposed Order that addresses the fair value issue by making a finding that the impact on rate base  
6 and revenue is *de minimus*. Proposed amendment language is included in Exhibit B.

7 **III. Conclusion.**

8 TEP requests that the Commission approve the program as recommended by Staff, and that the  
9 Commission adopt the two clarifying amendments attached to this Reply.

10  
11 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of December, 2014.

12 TUCSON ELECTRIC POWER COMPANY

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26 <sup>4</sup> See Decision No. 74000 (July 30, 2013)(City of Tucson); Decision No. 73652 (Feb. 6,  
2013)(Pima County).

27 <sup>5</sup> Decision No. 71646 (April 14, 2010) at Finding of Fact No. 45.

1 Original and 13 copies of the foregoing  
2 filed this 9<sup>th</sup> day of December, 2014, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Copies of the foregoing hand-delivered/mailed  
8 this 9<sup>th</sup> day of December, 2014, to the following:

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EXHIBIT A

PROPOSED AMENDMENT

REGULATORY OUT FOR FIXED RATE

Page 10, line 24, ADD new Finding of Fact after Finding of Fact No. 39:

“As discussed above, TEP’s contract with customers will provide for a fixed rate for 25 years. We believe that this is just and reasonable in light of the estimate life of the facilities and the typical term of a manufacturer’s warranty. We approved a fixed rate for certain solar projects for TEP’s Bright Tucson Program in Decision No. 71835 (August 10, 2010). However, we believe it is appropriate to ensure that in the future the Commission has the opportunity to modify the fixed rate if such a change is warranted. Therefore, we will require TEP to include in each contract contemplated under the tariff for this program a provision that informs the program participant that the Arizona Corporation Commission has the authority to modify the fixed rate and that if the Commission modifies the rate for existing participants, those participants may opt out of the program at no cost to the participant.

Page 18, line 7, ADD new Ordering Paragraph:

“IT IS FURTHER ORDERED that Tucson Electric Power Company shall include a provision in all customer contracts contemplated under the tariff for its utility owned distributed generation program that informs the program participant that the Arizona Corporation Commission has the authority to modify the fixed rate and that if the Commission modifies the rate for existing participants, those participants may opt out of the program at no cost to the participant.”

MAKE ALL CONFORMING CHANGES

EXHIBIT B  
PROPOSED AMENDMENT  
FAIR VALUE

Page 10, line 24, ADD new Findings of Fact after Finding of Fact No. 39:

“40. The Fair Value of the utility owned distributed generation program assets is \$0, because the program has not yet begun. We have authorized up to \$10 million in expenditures in this pilot program. Thus, the projected fair value of the utility assets under this program is \$10 million. TEP’s rate base in its most recent rate order was over \$2.2 billion.<sup>6</sup> Thus, we find that the fair value impact of this program is *de minimus*.”

41. On July 18, 2014, TEP filed its proposed Residential Solar Company Owned Systems Tariff for its utility owned distributed generation program. The program will involve up to 600 customers. Overall, TEP has over 400,000 customers. In addition, we note that the fixed price is comparable to current residential rates, and that an eligible customer will elect to participate in the program only to the extent the customer finds the program is more advantageous. Thus, in light of the *de minimus* fair value impact and the other choices available to customers, we find the proposed Residential Solar Company Owned Systems Tariff is just and reasonable.”

Page 17, line 16, ADD new Conclusion of Law No. 4:

“The fair value impact of the utility owned distributed generation program is *de minimus*.”

Page 17, line 16, ADD new Conclusion of Law No. 5:

“The “Residential Solar Company Owned Systems Tariff” filed by TEP on July 18, 2014 in this docket for the utility owned distributed generation program is just and reasonable.”

Page 18, line 7, ADD new Ordering Paragraph: “The “Residential Solar Company Owned Systems Tariff” filed by TEP on July 18, 2014 is approved.”

MAKE ALL CONFORMING CHANGES

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<sup>6</sup> See Decision No. 73912 (July 27, 2013) at page 70, Finding of Fact No. 35.